

RIVER GAS CORPORATION
TEXACO EXPLORATION AND PRODUCTION INC.
DOMINION RESERVES-UTAH, INC.

IBLA 96-28

Decided June 21, 1999

Appeal from a decision of the Deputy State Director, Utah State Office, Bureau of Land Management, affirming in part and reversing in part the decision of the Associate District Manager, Moab District Office, Bureau of Land Management, denying a request for suspension of operations and production. UT SDR 95-4.

Affirmed in part and reversed in part.

1. Oil and Gas Leases--Suspensions: Oil and Gas Leases--Unit and Cooperative Agreements

The essence of unitization is that activities on one lease that fulfill lease obligations are imputed to and benefit every other lease in the unit. Thus, the terms of individual leases within the unit cannot expire where there is production or drilling on any one tract, and it is immaterial whether such production or drilling occurs on a Federal tract or a non-Federal tract committed to the unit. If operations continue on the non-Federal tracts within the unit, it cannot rationally be argued that unit operations have been suspended as a result of requiring the completion of an Environmental Impact Statement, even though development on the Federal leaseholds cannot occur until after it has been completed.

2. Oil and Gas Leases--Suspensions

Where lessees received a letter from BLM that followed a meeting to discuss the preparation of an Environmental Impact Statement, the letter constituted the direction to suspend all operations and production.

Because no further operations and production were to be permitted, the absence of a denial of site-specific activities is immaterial. No other document demonstrating or suggesting a different point in time

when site-specific activity was denied was identified or submitted, and the letter contained other indications that no further production would be permitted. In such circumstances, the letter will be held to constitute the point of decision after which further operations and production was suspended.

3. Oil and Gas Leases--Suspensions

The Secretary is obliged to grant a suspension of operations and production where he takes an action or fails to act so that the lessee is prevented from commencing drilling operations. Conversely, where the lessee requests the suspension and it is not mandated by the circumstances, the Secretary's authority to grant or deny it is discretionary. Where the lessee is directed to cease all operations and production, the effective date of the suspension is the date on which operations, production, or operations and production can proceed no further. That date, rather than the first of the month in which the application for suspension is filed, ensures lessees will receive the full relief Congress intended in enacting section 39 of the Mineral Leasing Act.

4. Oil and Gas Leases--Suspensions

A lessee must file a written application for suspension before the expiration of the lease term, even when the suspension is directed by the Secretary.

It is in furnishing the statement of the circumstances necessitating the request required by 43 C.F.R. § 3165.1(a) that the lessee would indicate that the suspension was directed by the authorized officer.

APPEARANCES: Angela L. Franklin, Esq., and A. John Davis, III, Esq., Salt Lake City, Utah, for Appellants.

OPINION BY ADMINISTRATIVE JUDGE PRICE

River Gas Corporation (River Gas), Texaco Exploration and Production Inc., and Dominion Reserves-Utah (collectively RGC) have appealed the September 7, 1995, Decision of the Deputy State Director, Utah State Office, Bureau of Land Management (BLM), affirming in part and reversing in part a decision of the Associate District Manager, Moab District Office, BLM, which denied RGC's application for a suspension of operations and production (SOP).

RGC is the lessee of record of 65 Federal oil and gas leases described in Exhibit A to Appellants' Statement of Reasons (SOR) for

appeal. 1/ Effective December 28, 1990, 17 of the leases became part of the Drunkards Wash Unit (Unit). RGC has drilled 97 wells, none on Federal leases, 79 of which are producing within and surrounding the Unit. When RGC completed its 33rd well, BLM determined that the Unit had passed from the exploratory phase into the lease development phase. This determination was communicated to River Gas in a letter from BLM dated March 10, 1994. (Decision at 1; Ex. C to SOR.) That letter referenced a meeting between BLM and River Gas representatives on February 23, 1994, the purpose of which was to "advise River Gas as to when an Environmental Impact Statement (EIS) would be required for the Drunkards Wash Unit." (Ex. C at 1.) More specifically, the letter stated the following:

[A]n EIS must be completed when BLM determines that operations in an oil and gas field, where significant impacts are anticipated, pass from the exploratory phase into development.

Precisely when an operation passes from exploration to development is difficult to define. * * * The Drunkards Wash Unit, with 33 producing wells, is clearly in the development phase. Although we realize that the drilling you have done to date is limited to a relatively small portion of the unit, and more exploratory work will have to be done, the unit is nonetheless in development.

Before development can progress onto Federal lands, an EIS must be completed. This includes Federal lands that are outside the unit, but proximal to existing development.

(Ex. C at 1.) On August 15, 1994, BLM published notice of its intent to prepare the EIS. 59 Fed. Reg. 41781.

On December 29, 1994, RGC filed applications for permit to drill (APD) for six wells, five of which would be drilled outside the Unit, and the

1/ The Federal leases within the Drunkard's Wash Unit are as follows: UTU-49631; UTU-49931; UTU-50646; UTU-47157; UTU-50941; UTU-51584; UTU-50645; UTU-65946; UTU-53872; UTU-69450; UTU-69452; UTU-69453; UTU-72377; UTU-72470; UTU-69451; UTU-69454; and UTU-57821. The Unit encompasses approximately 28,800 acres.

The Federal leases outside the Drunkard's Wash Unit are as follows: UTU-60925; UTU-61158; UTU-61155; UTU-61154; UTU-61156; UTU-60402; UTU-62623; UTU-61547; UTU-65296; UTU-65297; UTU-65298; UTU-65300; UTU-65301; UTU-65302; UTU-65303; UTU-67839; UTU-67840; UTU-68543; UTU-72004; UTU-72003; UTU-72352; UTU-72351; UTU-72350; UTU-72355; UTU-73752; UTU-72378; UTU-72357; UTU-72358; UTU-61548; UTU-69449; UTU-67621; UTU-62276; UTU-62145; UTU-72477; UTU-72620; UTU-72624; UTU-72625; UTU-72724; UTU-72723; UTU-72746; UTU-73003; UTU-73075; UTU-73330; UTU-73331; UTU-73523; UTU-70219; UTU-73876; and UTU-73884. We will forego the recitation of the land descriptions associated with each lease because of the number involved.

fifth well would be drilled within the Unit. By letter dated January 23, 1995, BLM acknowledged receipt of the APD's, but advised that it was unable to approve any APD until after the completion of the EIS and restrictions and mitigation measures were known. It was anticipated that the EIS would be completed in May 1996.

On May 11, 1995, RGC filed its application for an SOP dated April 28, 1995, in which a suspension of production and operations on the 66 leases ^{2/} was requested. A suspension of production and operations results in a suspension of the lease term equal to the period of the suspension, and suspends payment of annual rentals or minimum royalty payments. 43 C.F.R. § 3103.4-2. ^{3/} On June 30, 1995, the Associate District Manager (ADM) issued his decision (ADM Decision). After acknowledging that development of the Unit "would be further along than it is," but for the requirement of an EIS and that "some of [RGC's] lease rights are being denied (or more specifically, delayed) in the interest of conservation," the ADM stated the following:

[Y]our leases within the Drunkards Wash Unit are receiving the benefit of extension by virtue of inclusion in the producing unit. Although you are unable to realize the full benefit of the leases, you are certainly receiving some benefit.

The available guidance is silent on situations where some benefits are allowed while others are denied. Therefore, we must follow a literal interpretation of BLM Manual 3160-10, which reads in part:

A suspension of operations and production under Section 39 of the MLA [Mineral Leasing Act of 1920, 30 U.S.C. § 209 (1994)] suspends both operations and production activities. Therefore, the lessee is denied all beneficial use of the lease.

This and other guidance indicate that no beneficial use of the lease can continue while the lease is under suspension of operations and production.

(ADM Decision at 1.)

As to the 49 leases exterior to the Unit, the ADM noted that an APD had been filed for only 1 lease, U-65296. The ADM noted that BLM typically requires an APD as a condition precedent to the grant of an SOP because most leases expire without being drilled. BLM thus views the APD as "a gesture of commitment," without which BLM would be in the position of defeating competition for leases by granting suspensions on leases that are unlikely to be developed. The ADM therefore concluded that the SOP should be denied as to the 48 non-Unit leases for which no APD had been

^{2/} RGC did not appeal the decision insofar as it denied an SOP for Lease U-16172, and thus 65 leases are involved. (SOR at 2, n.1.)

^{3/} Regulation 43 C.F.R. § 3103.4-2 was redesignated 43 C.F.R. § 3103.4-4. 61 Fed. Reg. 4750 (Feb. 8, 1996).

filed, although he expressed confidence in RGC's intent to drill all the leases, given the activities to date. (ADM Decision at 2.)

The requested SOP was granted as to U-65296, effective May 1, 1995, the first day of the month in which the SOP was requested. (ADM Decision at 2.)

On August 2, 1995, RGC requested State Director's review of the ADM Decision (SDR Memorandum). As grounds therefor, RGC contended that the BLM Manual does not have the force and effect of law, and must be interpreted in a manner that is consistent with governing statutes, regulations, and case law, and that, in any event, the ADM had interpreted the Manual incorrectly. (SDR Memorandum at 5.) Citing Copper Valley Machine Works, Inc. (Copper Valley), 653 F.2d 595 (D.C. Cir. 1981), RGC argued that there is no distinction between leases in the Unit and those outside of it, the relevant inquiry being whether the impediments imposed in the interest of conservation constitute a suspension of production and operations. (SDR Memorandum at 6.) With respect to the Unit leases, RGC maintained that the extension of Unit lease terms is not a "beneficial use" within the meaning of the ADM Decision, but the result of inclusion in the Unit, and is contrary to the plain meaning of the BLM Manual and the Mineral Leasing Act (MLA), 30 U.S.C. § 209 (1994). (SDR Memorandum at 6-7.)

RGC further argued that the requirement that it file an APD for each lease as a condition precedent to considering an application for an SOP was contrary to the BLM Manual and applicable regulations, which require only a complete application. (SDR Memorandum at 7-8.) Lastly, RGC asserted that the SOP should have been granted as of March 10, 1994, the date of BLM's letter informing Appellants that an EIS was required before further development could proceed.

On June 30, 1995, the Deputy State Director issued his Decision affirming in part and denying in part the ADM Decision. Referring to RGC's oral presentation before him, 4/ the Deputy State Director articulated three issues: whether an SOP is appropriate; whether the MLA requires leases within and without an approved Unit to be treated the same for purposes of a request for an SOP; and the proper effective date of an SOP, should it be granted. He reversed that portion of the ADM Decision that would have required RGC to file individual APD's for each lease, because "[t]he District [Office] has made it very clear to RGC that no oil and gas activities will be allowed within the EIS area until completion of the EIS. Filing individual APDs to establish a record would be unwarranted since the actions applied for would not be approved." (Decision at 2.)

With respect to the second issue before him, the Deputy State Director affirmed the ADM Decision, concluding that the "leases within the Unit carry special characterization" because drilling and production on any

4/ The tape of the proceeding was made a part of the case file.

tract of the unitized premises is imputed to every tract within the Unit, and hence no lease will expire. This consequence, he concluded, constitutes a lease benefit sufficient to dictate the denial of the requested SOP. (Decision at 2.)

As to the third issue, the Deputy State Director also affirmed the ADM Decision, stating that "[t]he March 10, 1994, letter was not itself a decision point denying site-specific activity," and further asserting that it was not apparent that no oil and gas activities would be permitted until after a number of conversations and meetings between BLM and RGC had ensued. Since the operating rights owners did not submit a complete application for an SOP until May 11, 1995, it was appropriate to set the effective date as May 1, 1995. The Decision also contained the observation that "[a] May 1, 1995, effective date for the SOPs leaves sufficient time for RGC to file for, receive approval, and initiate operations for exploration and development prior to expiration of any leases suspended by this decision." (Decision at 2.) RGC timely appealed the Decision.

Before this Board, RGC reiterates its arguments, contending in summary that "RGC is entitled to formal recognition of the suspension imposed by the BLM of all the subject leases, including the seventeen leases within the Drunkards Wash Unit, effective the date BLM ordered the EIS on March 10, 1994," and thus a suspension of rentals or minimum rentals as well as an extension equal to the period of suspension. (SOR at 6.)

We begin with the governing statute. Section 39 of the MLA, 30 U.S.C. § 209 (1994), provides as follows:

The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of * * * oil [and] gas * * *, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof * * *, whenever in his judgment the leases cannot be successfully operated under the terms provided therein. * * * In the event the Secretary of the Interior, in the interest of conservation, shall direct or assent to the suspension of operations and production under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provision of this section shall apply to all oil and gas leases issued under this chapter, including those within an approved or prescribed plan for unit or cooperative development and operation.

Implementing regulations appear at 43 C.F.R. §§ 3103.4-2 and 3165.1. These provide that a suspension of all operations and production, or operations only, or of production only, may be directed or consented to by the

authorized officer only in the interest of conservation, upon application by all the operating interest owners, or in the case of units, by the unit operator on behalf of all the operating interest owners of the committed tracts of the unit, before the expiration of the lease.

43 C.F.R. §§ 3103.4-2(a) and 3165.1(a) and (b). If an SOP is granted, the regulation provides that it "will" be effective on the first day of the month in which a complete, properly executed application is received, or on such other date as the authorized officer designates. 43 C.F.R. §§ 3103.4-2(c) and 3165.1(c). Any suspension results in an extension of the lease term by a period equal to the period of suspension. 43 C.F.R. § 3103.4-2(b). However, only a suspension of all operations and production results in a suspension of rentals or minimum royalty. 43 C.F.R. § 3103.4-2(d).

The guidance provided by the BLM Manual 5/ defines a suspension of operations and production as one which denies the lessee "all beneficial use of the lease." Operations and production are characterized as "[a]ctivities designed to benefit the lease." The Glossary of Terms in the BLM Manual defines "operations" as "all beneficial use of the lease, including construction of access roads on the leased land, site preparation, well repair, drilling or similar activity." "Beneficial uses" does not include "casual uses that do not require a permit under the lease (e.g., survey and staking), activities that may be conducted without the need for a lease (e.g., seismic exploration)," or "operations that consist strictly of routine maintenance in order to prevent damage to wells." BLM Manual, 3160-10.2.21.A.1 (Rel. 3-150, 3/13/87).

The BLM Manual further provides that a suspension of operations and production typically is warranted when "BLM orders a suspension of all operational activities on a lease to protect natural resources (e.g., delay oil and gas drilling to allow extraction of coal)." Additionally, a suspension of operations and production is appropriate when "BLM or other surface managing agency (SMA) initiates environmental studies (Environmental Assessment/Environmental Impact Statement/Resource Management Plan) that prohibit beneficial use of the lease(s)." BLM Manual, 3160-10.2.21.B.1 (Rel. 3-150, 3/13/87). Thus, we note in passing that the Deputy State Director properly granted an SOP for the leases outside the Unit, because no operations or production can proceed until the EIS is completed.

With respect to the Unit, the question presented is whether the fact that production on one tract within an approved unit is imputed to and extends all the leases in the unit constitutes beneficial use within the meaning of the MLA, such that the denial of an SOP request is justified. To briefly reiterate the key facts, there are 79 producing wells within

5/ Appellants correctly note that the BLM Manual lacks the force and effect of law. As this Board often has held, however, it is binding on BLM. Howard B. Keck, Jr., 124 IBLA 44, 55 (1992), and cases cited therein.

and surrounding the Unit, but none of these wells is on a Federal leasehold. (SOR at 2.) We assume that the wells in the Unit continue to produce, because we have not been advised to the contrary. See Application for Suspension at 6. Completion of the EIS is required before development can proceed from non-Federal land onto any of the Federal tracts, but as noted earlier, the area that will be covered by the EIS includes the Unit and the 47 leases outside of it. (SOR at 3.)

[1] With respect to the 17 Federal leases in the Unit, Appellants ignore the fundamental attributes of unitization. The very essence of unitization is that activities on one lease that fulfill lease obligations are imputed to and benefit every other lease in the unit. Thus, the terms of individual leases within the Unit cannot expire when held by reason of production or drilling on any one tract, and it is immaterial whether such production or drilling occurs on a Federal tract or a non-Federal tract 6/ committed to the Unit. 43 C.F.R. § 3107.3; Lario Oil and Gas Co., 92 IBLA 46, 50 (1986). Appellants have and are fully enjoying beneficial use of their non-Federal tracts. If operations continue on the non-Federal tracts within the Unit, it cannot rationally be argued that Unit operations have been suspended during the preparation of an EIS, even though development on the Federal leaseholds cannot occur until after the EIS has been completed.

In short, Appellants cannot accept the fact and consequences of unitization for some purposes and argue that they should be ignored for others. As BLM did not halt or prevent Unit operations or production, there is no reason to disturb the Decision insofar as it denies the requested suspension of the unitized leases. Thus, we find that the Decision on this point is in accord with the MLA, the regulations, and the guidance set forth in the BLM Manual and therefore must be affirmed.

RGC also complains that the effective date of the suspension of the 47 leases exterior to the Unit should have been March 10, 1994, the date of the letter in which BLM confirmed that an EIS was required. The Deputy State Director relied upon four points in affirming the May 1, 1995, effective date of the SOP. First, he noted that the letter did not constitute a "decision point denying site-specific activity." Second, he asserted that it did not become clear that no activity would be allowed until "later." Third, the Deputy State Director noted that a complete, properly executed request for the SOP was not filed until May 11, 1995. (Decision at 2.) Finally, the Decision concluded that a May 1 date allowed RGC sufficient time to initiate drilling or production, including the necessary approvals, before any lease affected by the suspension expired. We will address each point in turn.

[2] We find the lack of reference to site-specific activity in the March 10 letter unpersuasive and, in these circumstances, pointless. No further operations and production were to be permitted, and thus the need to identify site-specific activities is a matter of form rather than of

6/ The record does not identify or even generally describe the non-Federal leases in the Unit.

substance. Indeed, this is precisely the reasoning the Deputy State Director relied upon in reversing the ADM's decision to require individual APD's. Moreover, if there is some other document demonstrating a point in time other than March 10 when site-specific activity was denied, it was neither identified by the Deputy State Director in his Decision nor in the case file.

RGC has not disputed the Deputy State Director's assertion that the parties did not know that there was to be no development activity until after "a series of subsequent conversations and meetings between RGC and the Bureau." (Decision at 2.) However, the subject letter followed and confirmed what transpired at a February 23, 1995, meeting among the parties, the purpose of which was "to advise River Gas as to when an [EIS] would be required" for the Unit. (March 10, 1994, letter at 1.) The letter itself stated that an EIS would be required when oil and gas activities had passed from the exploratory to the developmental stage, and determined that such had occurred. Consistent with that determination, the letter states that pending APD's would be approved, but only for the purpose of obtaining information useful to the EIS process, and accordingly advised RGC that if drilled, the wells could not go into production before the conclusion of the EIS. ^{7/} (March 10, 1994, letter at 1.) Additionally, RGC was directed to "begin planning for the EIS process immediately." (March 10, 1994, letter at 2.) Thus, whether RGC reasonably understood the letter as forbidding any development operations on Federal leases is a fair question, particularly in the absence of conflicting evidence in the record. We conclude that the effect and message of the letter was to establish a date after which no further operations and production activity were permissible, despite the absence of any language enumerating particular activities. Our conclusion rests on a certainty that BLM would have acted swiftly and surely had Appellants ignored the March 10 letter and proceeded with development activities on the assumption that it was not the "decision point."

Having concluded that the letter constituted direction to suspend operations, we turn to the questions of whether, in the circumstances here presented, RGC was required to file an application to request an SOP, and the proper effective date of the resulting SOP. It is clear that the regulations require an application to be filed in the proper BLM office prior to lease expiration as a condition to granting an SOP. 43 C.F.R. §§ 3103.4-2(a) and 3165.1. The regulations also provide that the effective date is to be the first of the month in which the completed application was filed, but permits the authorized officer to exercise his discretion to set a different date. 43 C.F.R. §§ 3103.4-2(c) and (d), and 3165.1(c).

RGC contends that "the regulations do not clearly address the mechanics of suspension by the BLM." (SOR at 13.) It is contended that

^{7/} RGC did not drill any of the wells to which the APD's pertained.

a distinction must be drawn between the cases in which BLM directs the suspension, and those in which the lessee initiates a request for an SOP, such as in circumstances constituting a force majeure suspension. It is argued that in the latter situation, the lessee would initiate the request by filing an application, reasoning that no application is required when BLM directs the suspension. According to RGC, it filed its application only to obtain "formal recognition of the BLM's earlier direction imposing the suspension on RGC." (SOR at 13.)

RGC pursues this line of argument by noting that 43 C.F.R. § 3165(c) permits either the "first day of the month in which the completed application was filed" or "the date specified by the authorized officer." (SOR at 14.) Appellants argue that the emphasized language pertains to those cases in which the suspension is directed by BLM, whereas the former pertains to SOP's initiated by the lessee. We cannot agree that the latter phrase means "on the date the suspension is imposed by the authorized officer," as RGC suggests. We decline to attribute greater meaning to the phrase than that suggested by the plain meaning of the words employed, and conclude that the regulation allows the authorized officer to establish the effective date as of the first of the month or on such other date as he may designate.

[3] However, we agree that there is a distinction between suspensions requested by the lessee and those imposed by BLM without regard to the lessee's preference in the matter. The Secretary is obliged to grant a suspension of operations and production when he takes an action or fails to act so that the lessee is prevented from commencing drilling operations. Copper Valley Machine Works, Inc., 653 F.2d 595, 604-605 (1981); Consolidated Coal Co., 111 IBLA 381, 386 (1989); Solicitor's Opinion, M-36831: Suspension of Operations on Oil and Gas Leases, 78 I.D. 256 (1971); Texaco, Inc., 68 I.D. 194, 200 (1961). Conversely, when the lessee requests the suspension and it is not mandated by the circumstances, the Secretary's authority to grant or deny it is discretionary. Bronco Oil & Gas Co., 105 IBLA 84, 87 (1988); Jack C. Grynberg, 88 IBLA 330, 334 (1985). When the lessee is directed to cease all operations and production, fairness and common sense suggest that the effective date should be the date after which no further operations, production, or operations and production can proceed. The use of that date, rather than the first of the month in which the application is filed, ensures lessees will receive the full relief Congress intended in enacting section 39 of the MLA. As was observed in the Solicitor's Opinion, M-36953: "Oil & Gas Lease Suspension", 92 I.D. 293, 296-97 (1985), section 39 of the MLA constituted a remedy to the obvious inequity of allowing the lease term to run and requiring payment of rental and minimum royalty during the period when the lessee had been denied the use and enjoyment of his lease. Fully effectuating Congress' remedy by utilizing the date when operations and production are actually suspended by BLM more certainly allows RGC the same amount of time to obtain approval for the activities needed to protect its leases from expiration that it would have had, had the lessee not been denied the use and enjoyment of the lease.

Thus, in this case, the effective date should have been March 10, the date that RGC was informed that no further operations and production would be permitted until the EIS was completed. To the extent a different date was contemplated or intended, it fell to BLM to clearly state the date in its correspondence or dealings with RGC, or if the parties reached an understanding regarding a date that was not reduced to a writing, to provide the evidence that would allow us to find as much.

[4] We have found no authority to support the argument that the requirement to file a complete, properly executed application is obviated when BLM directs the suspension, and none has been cited. (SOR at 13.) On the contrary, the lessee must file a written application before the expiration of the lease term. TNT Oil Co., 134 IBLA 201, 203 (1995); Mobil Producing Texas and New Mexico, 99 IBLA 5, 8 (1987); Jones-O'Brien, 85 I.D. 89, 94, 96 (1978). However, in furnishing the statement of the circumstances necessitating the request for a suspension required by 43 C.F.R. § 3165.1(a), the lessee would indicate that it was directed by the authorized officer to suspend operations, production, or operations and production, as the case may be.

In conclusion, we hold that when BLM directs a lessee to suspend operations and production in the interests of conservation, the lessee is entitled to a suspension, the result of which is that the lease term is extended and the lessee is relieved of the obligation to pay rental and minimum royalty during the period of such suspension. The lessee is required to submit an application for an SOP, but the effective date of the SOP is the date after which no further operations and production are allowed. A request for suspension of Unit operations and production is properly denied when operations and production continue on one or more of the tracts or leases within the Unit.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed in part and reversed in part.

T. Britt Price
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge